

CM / ECF

CM/ECF News

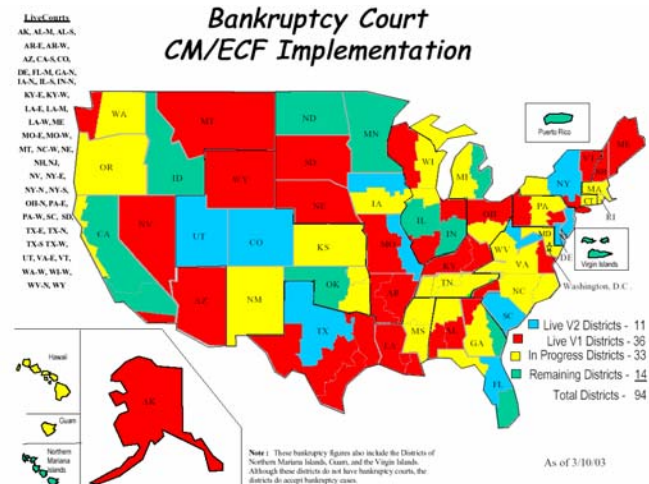
The District of Hawaii will soon join nearly fifty other bankruptcy courts around the country that have implemented the Case Management / Electronic Case Files (CM/ECF) system. As shown in the insert, as of March 10, 2003, there were thirty-six bankruptcy courts “live” with CM/ECF Version 1 and eleven courts “live” on Version 2 of the application, with many allowing attorneys to file documents electronically via the Internet. In addition, seventeen district courts are now operational. It might interest those attorneys who sometimes need to travel to Guam in their practice that plans have begun already for CM/ECF implementation there for bankruptcy cases.

CM/ECF Administrative Order and Procedures. Local Bankruptcy Rule 5005-4(b) provides that documents may be filed, signed, verified and served by electronic means, as established by administrative order of the court. On March 7, 2003, the court posted at its website a draft copy of the administrative order adopting CM/ECF procedures. The bar and public have been invited to make any comments by March 24, 2003. The court anticipates that many of the provisions will eventually be converted to local rules. However, as electronic filing is new to our district, adoption by administrative order permits the flexibility to make procedural modifications as both the court and attorneys gain experience with CM/ECF.

Start Date. The court plans on implementation as soon as a few final steps are completed. For example, the court must ensure that an error-free data conversion takes place. Rather than continue to support a system with document images on RACER, the court will convert all existing data - including all docket entries and attached images - for use in the CM/ECF system. Testing for the conversion should be completed shortly. Another step is a final test of forms and notices to be generated automatically through the Bankruptcy Noticing Center (BNC).

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CourtNotes



ECF User Registration. As implementation nears, applications for a login and password for CM/ECF training will be available at the court’s website. Upon acceptance of the application, attorneys and their staff will be assigned an individual login and initial password for access to the TRAIN database (as opposed to the “LIVE” database with the official court docket). After training and certification, an attorney or trustee will be required to sign a registration form, a draft of which is included with the administrative procedures. Completion of this form is the ECF User’s agreement that use of the login and password is equivalent to the filer’s signature on a paper document, as well as a written consent to accept service of documents through electronic transmission, i.e. the CM/ECF notification and link to a document image sent to the ECF User’s e-mail account. Although training logins are available to all trainees, the court will issue full participant logins and passwords for the LIVE database only to an attorney or trustee (certain institutional creditors may be allowed limited participation). An ECF User may authorize a staff member to use the login and password, but its use signifies the ECF User’s signature for all purposes, including those under Rule 9011. An ECF User always has the ability to change the password and must do so whenever there is a change in staff or office procedures and authorization for an individual to use the login and password is terminated.

ECF User Account vs. PACER account. There have been a number of inquiries concerning the interplay between use of ECF and PACER accounts. First, a PACER account will continue to be needed to access the court's docket through the Internet. Once CM/ECF is implemented, the WebRACER docket will be replaced by a screen with 3 menus available: **Query**, **Reports**, and **Utilities**. By using selections under Query and Reports, one can review docket sheets as well as access the PDF images of documents for a charge of \$.07 per page but not more than \$2.10 per document. PACER account holders will continue to be billed quarterly for these charges.

Using an ECF User login and password, one will be presented with an additional two menus: **Bankruptcy** and **Adversary**. Events under these menus are strictly for the filing of documents. There are no fees associated with electronic filing, other than the filing fees set by the Judicial Conference for the filing of certain types of documents whether on paper or as an electronic image. These filing fees must be paid through the U.S. Treasury Internet credit card payment system. There is nothing to sign up for - a payment screen appears at the end of each filing event requiring a fee and offers two choices: "Pay Now" or "Continue Filing." If one elects to Pay Now, a screen will prompt entry of a credit card, as shown below, and the transaction will be recorded upon acceptance of the payment. If one elects to Continue Filing, an aggregate payment may be made later, but not after 9:00 p.m. of the same date. The filer is responsible for maintaining one or more credit card accounts with appropriate credit limits.

The screenshot shows a web browser window titled "US_Courts@iccc.gov: Payment Collections - Microsoft Internet Explorer". The page content is as follows:

Please enter your credit card information below:

Name:	Bonnie Barrister
Total:	\$800.00
Card Type:	<input type="text" value="Please select a card type"/>
Card Number:	<input type="text" value="Please select a card type"/>
Expiration Date:	<input type="text" value="Please select a card type"/>

Below the dropdown menu, the following card types are listed: American Express, Discover, MasterCard, Visa, and Diners Club.

For your privacy and protection, the information submitted here is encrypted using 128-bit SSL.

Other Notes

Breakfast with the Judge. The HSBA Bankruptcy Law Section sponsored a bench-bar breakfast at Oahu Country Club with U.S. Bankruptcy Judge Robert J. Faris on March 5, 2003. Judge Faris shared a number of thoughts on judicial philosophy as well as procedural pointers. Some highlights follow.

- Factual assertions should be supported by admissible evidence - declarations made by those with personal knowledge of the facts.

- The recently amended local rules require that a notice of hearing include a brief but adequate description of the particular relief being requested.

- The court will be happy to accommodate attorneys and parties wishing to appear by videoconference and plans are being made to expand its use.

- It may be possible for the court and the bar to formulate some basic guidelines for chapter 11 procedures that will increase efficiency and decrease costs.

- Attorneys should not risk improper communication with judge's chambers. Inquiries regarding discovery disputes, requests to shorten time and other matters should be made to Ms. Ori Vegas, the courtroom deputy, at 522-8100 ext. 111, or by e-mail: calendar@hib.uscourts.gov.

Recent 9th Circuit Cases

In re Dyer, __ F.3d __, 2003 WL 1090176 (9th Cir. 2003) (automatic stay violation warranted recovery of a portion of attorney fees as compensatory damages but not \$50,000 for punitive damages). Thrifty Oil Co. v. Bank of America Nat'l Trust & Sav. Ass'n, __ F.3d __, 2003 WL 751325 (9th Cir. 2003) (attorney fees not recoverable for litigation of bankruptcy issue where state law contract issues were merely tangential). In re Kolb, __ F.3d __, 2003 WL 665819 (9th Cir. 2003) (debtor could not disclaim contingent interest in trust where he had listed it to obtain past loan - California law). In re Burns, __ B.R. __, 2003 WL 940809 (B.A.P. 9th Cir. 2003) (creditor's interest in settlement proceeds held in client trust account - California law). In re Casserino, __ B.R. __, BAP OR-02-1512 (B.A.P. 9th Cir. 2003) (debtor allowed homestead exemption in prepaid rent and security deposit - Oregon law). In re Davison, __ B.R. __, 2003 WL 901257 (B.A.P. 9th Cir. 2003) (attorney fees not recoverable where fraud issue did not involve enforcing or interpreting contract, as required by attorney fee clause).

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CourtNotes. This email newsletter is intended to keep the local bar informed about CM/ECF and other court news and procedures. If you wish to be added to (or removed from) the court's email list for receipt of this newsletter, or if you have any comments or questions, please contact Mark Van Allsburg, Clerk of Court, or michael_dowling@hib.uscourts.gov.